

§ 5.23

detailed earnings statements under the Social Security program, or records currently available from the Government Printing Office of the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the Public Health Service or public information leaflets distributed by the Social Security Administration.

§ 5.23 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.24 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101-11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook: *Files Maintenance and Records Disposition*.

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(b) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, we will provide the printout.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.

(1) *HHS Freedom of Information Officer.* Only the HHS Freedom of Information Officer may determine whether to release or deny records in any of the following situations:

(i) The records you seek include records addressed to or sent from an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Office of Human Development Services, the Family Support Administration, or any organizational unit of HHS not specifically identified below; or